



Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: Bill Strong Enterprises, Inc.

File: B-260721

Date: July 10, 1995

Suzanne M. Dohrer, Esq., Haglund, Dohrer & Watts, and Sherman A. Botts, Esq., Lathrop & Norquist, L.C., for the protester.
Scott R. Schoenfeld, Esq., Leonard, Hurt, Terry & Blinn, for Texas-Capital Contractors, Inc., an interested party.
Ann L. Giddings, Esq., and Cynthia S. Guill, Esq., Department of the Navy, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bid was properly rejected as late where both bidder and its delivery agent, Federal Express, took actions which contributed significantly to the bid's late receipt.

DECISION

Bill Strong Enterprises, Inc. protests the rejection of its bid as late under invitation for bids (IFB) No. N62477-95-B-0015, issued by the Department of the Navy for the renovation of family housing at Andrews Air Force Base in Camp Springs, Maryland. The protester contends that the late receipt of its bid was the result of government mishandling.

We deny the protest.

The IFB, as amended, instructed bidders that bids were due at the Engineering Field Activity, Chesapeake, 901 M St., S.E., Building 212, Washington Navy Yard, Washington, D.C. 20374-5018 by 2:00 p.m. on February 9, 1995, and that bid envelopes should be marked to show the bidder's name and address, the solicitation number, and the date and time of bid opening. The IFB further advised that all hand-delivered bids must be deposited in the bid box of the Office of Engineering Field Activity, Chesapeake, Naval Facilities Engineering Command, Building 212, Plans/Specification Office, 1st Floor, Washington Navy Yard,

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901 M St., S.E., Washington, D.C. 20374-2121 prior to the time set for bid opening.

Bill Strong dispatched its bid via Federal Express to the first of the two above-listed addresses on the afternoon of February 8. According to the Bill Strong representative who transmitted the bid package to Federal Express, a label identifying the invitation number and the date and time of opening fell off the Federal Express envelope as he was carrying the package out of the office to the pick-up location; since he could not locate a roll of scotch tape to re-affix the label, he pulled out a pen and wrote the word "BID" in 1 to 1-1/2 inch letters in a blank margin in the upper left hand corner of the back of the envelope. Federal Express delivered the package containing Bill Strong's bid, along with seven other packages, to the Engineering Field Activity, Chesapeake's mailroom at 11:37 on the morning of February 9. The time of delivery was approximately 1-1/4 hours later than the normal Federal Express delivery time, and when the packages arrived, only one of the clerks responsible for processing Federal Express deliveries was in the mailroom and he was preparing to depart for his regularly scheduled lunch break. This clerk logged in the packages before leaving for lunch, and, since he did not observe markings on any of the packages identifying them as bids, he set them aside for further processing and distribution after he had completed his other regularly scheduled afternoon duties. After returning from lunch, he proceeded to attend to these duties, which included making pick-ups from other buildings and preparing outgoing correspondence for Federal Express pick-up.

At 2:00 p.m., a government representative opened the bid box located in the Plans and Specifications Office, retrieved four bids, and proceeded to the bid opening room. Approximately 45 minutes after the bids had been opened, Bill Strong called to request the bid results. After the contracting officer identified the three low bidders and the amounts of their bids, the Bill Strong representative asked where his firm's bid was and stated that it was lower than the low bid revealed. The contracting officer responded that she would contact the mailroom to check for arrival of the bid.

The contracting officer then contacted the mailroom, which confirmed that a package from Bill Strong had been delivered before noon. The package was retrieved and delivered to the contracting officer, who opened it and inadvertently discarded the Federal Express envelope. The contracting officer notified the protester that its bid had been located and that a determination as to whether or not the bid could properly be considered would be sought from Navy counsel. By letter dated March 2, the contracting officer notified

Bill Strong that its bid was deemed late and would not be considered for award.

The protester takes issue with this determination, arguing that its bid should be considered since its late receipt was the result of government mishandling. In this regard, the protester contends that had the mailroom clerk not overlooked the marking "BID" on its Federal Express envelope, he would have contacted the contracts department immediately, as is his normal procedure, which would have assured retrieval of the package and delivery to the opening site prior to the time set for opening.

Bidders are responsible for delivering their bids to the proper place at the proper time, and late delivery of a bid generally requires its rejection. Pearl Properties, B-249519, Nov. 9, 1992, 92-2 CPD ¶ 333. A bid delivered to an agency by commercial carrier is considered to be hand-carried, and, if it arrives late, can only be considered if it is shown that improper government action was the paramount cause of its late receipt. Sencland CDC Enters., B-252796; B-252797, July 19, 1993, 93-2 CPD ¶ 36. A late bid cannot be considered if the bidder or its agent, through some action or inaction, contributed significantly to the late receipt. Id.

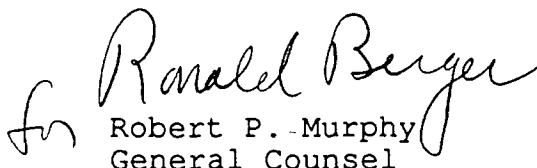
Based on our review of the record here, we conclude that both Bill Strong and its agent, Federal Express, contributed significantly to the late receipt of the protester's bid, and we therefore deny the protest. First, we think that Bill Strong contributed to its bid's late receipt by sending its bid package to the activity's mailing address rather than to the office specified for the delivery of hand-carried bids since this caused the bid to be received in a central mailroom, from which further distribution was required. Where a bidder directs its bid package to an activity's mailing address, it must anticipate that a reasonable amount of additional time will be required for delivery of the item from the mailroom to the opening location. CSLA, Inc., B-255177, Jan. 10, 1994, 94-1 CPD ¶ 63.

Second, the protester's agent, Federal Express, clearly contributed to the bid's late arrival by making its delivery more than an hour late that day since this resulted in the bid packages arriving at 11:37 a.m., as the mailroom clerks were preparing to go (or had gone) to lunch and immediately subsequent to which they had other regularly scheduled duties requiring their attention. Under ordinary circumstances, in contrast, the packages are delivered between 10:15 and 10:30 a.m., which gives the mailroom clerks ample time to open the packages and determine to

which offices they are to be directed prior to their lunch break.

Third, although we were persuaded by the testimony of the Bill Strong representatives at the hearing that we held concerning this case that the Federal Express envelope was indeed marked "BID,"¹ we were not persuaded that the marking was sufficiently distinctive that a diligent mailroom clerk would necessarily have seen it. In this regard, we note that the envelope was marked "BID" in only one place--on the back, in the corner; that it was marked with a pen, rather than with some sort of bold marker; and, finally, that neither the solicitation number nor the time and date of bid opening were clearly identified.²

In short, under the circumstances here, we cannot conclude that improper government action was the paramount cause of the late delivery. Therefore, the protest is denied.


for Robert P. Murphy
General Counsel

¹The mailroom clerk, and, initially, the contracting officer argued that the envelope had not been so marked. During the hearing, however, the contracting officer conceded that she had not examined the back of the envelope and thus would have no basis for knowing whether or not it had been marked.

²Bill Strong did identify the solicitation number in the portion of the airbill encaptioned "Your Internal Billing Information," but we do not think that the mailroom clerk could reasonably have been expected to inspect that portion of the airbill--and even if he had, he probably would not have recognized that bid opening was occurring that day since the opening date was misidentified.